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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,912	02/09/2004	James Schultz	82342	8866

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EXAMINER

SCHULTERBRANDT, KOFI A

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/774,912	SCHULTZ, JAMES
	Examiner	Art Unit
	Kofi A. Schulterbrandt	3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 09 February 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-13 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-13 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 09 February 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>051704</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

This first Office Action is in response to Applicant's originally filed Application received in the Office on February 9, 2004 in this case.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on May 17, 2004 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been being considered by the examiner.

Claim Objections

Claim 13 objected to because of the following informalities: No period at the end of the claim. Appropriate correction is required.

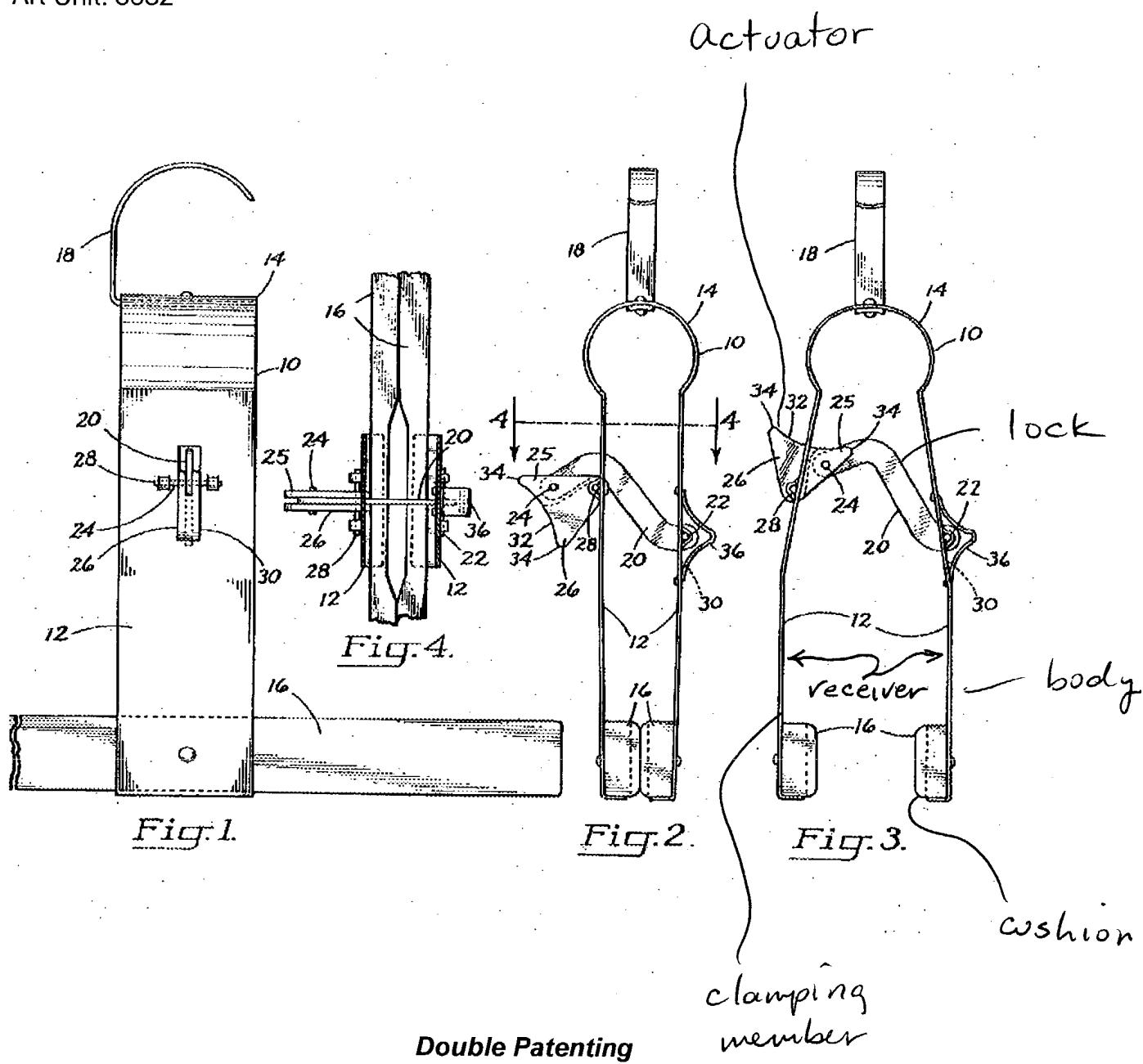
Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Peterson (3,865,287). Petersen teaches each feature of the claimed invention as shown below.



The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-13 are provisionally rejected under the judicially created doctrine of double patenting over claim claim 1 of copending Application No. 10/407,293. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

The Bold recitations below are extracted from previously filed Patent Application Serial No. 10/407,293. The present Application is in regular type.

Claim 1

a body; **a body defining at least one receiver;**

at least one clamping member displaceable relative to the body to move between a first position permitting a storage item to be received between the body and clamping member and a second position for retaining a storage item

received between the body and the clamping member; and **at least one clamping member cooperating with the at least one receiver and being moveable between a first position so the at least one receiver can receive an item for storage and a second position to apply force to secure an item in the at least one receiver for storage; and**

an actuator biasing the at least one clamping member and **an actuator having at least one spring capable of biasing the at least one clamping member,**
being selectively operable to move the at least one clamping member toward the second position and to provide a clamping force to an item received between the body and the clamping member. **the actuator being selectively operable to move the at least one clamping member toward the second position and convert the biasing of the at least one spring to a clamping force.**

Claim 2

wherein the body and clamping member define a receiver for storing the storage item therein. **a body defining at least one receiver;**

Claim 3

wherein the receiver includes cushioning material for contacting a surface of the storage item when the clamping force is applied to the storage item. **7. (Original) The storage apparatus of claim 4 wherein at least a portion of the at least one receiver includes a non-damaging surface to protect items stored therein.**

Claims 4 and 5

Claim 4. wherein the actuator includes a lock for retaining the actuator in a position for moving the clamping member to the second position. Claim 5. The storage apparams of claim 4 wherein the lock is selectively releaseable. **9. (Original) The storage apparatus of claim 1 wherein the actuator further comprises a selectively lock having a release mode to permit an time to be positioned in the receiver and a lock mode to maintain the at least one clamping member toward the second position to maintain a clamping force on an item in the receiver.**

Claim 6

6. a body; a body defining at least one receiver;
a plurality of clamping members having a first position permitting a storage item to be received between the body and the clamping member and being displaceable relative to the body to retain a storage item received between the body and the clamping member; and **at least one clamping member cooperating with the at least one receiver and being moveable between a first position so the at least one receiver can receive an item for storage and a second position to apply force to secure an item in the at least one receiver for storage; and**
an actuator for selecting the position of the clamping member. **the actuator being selectively operable to move the at least one clamping member toward the**

second position and convert the biasing of the at least one spring to a clamping force.

Claim 7

7. wherein the actuator cooperates with each clamping member to distribute bias force to the clamping members. **an actuator having at least one spring capable of biasing the at least one clamping member,**

Claim 8

8. The apparatus of claim 6 wherein the actuator cooperates to provide a bias towards a selected position for the clamping member.
an actuator having at least one spring capable of biasing the at least one clamping member,

Claims 9 and 10

9. The apparatus of claim 8 wherein the actuator includes a lock for retaining the actuator in a position for biasing the clamping member to retain a storage item between the body and the second position. 10. The apparatus of claim 9 wherein the lock is selectively releaseable. **9. (Original) The storage apparatus of claim 1 wherein the actuator further comprises a selectively lock having a release mode to permit an time to be positioned in the receiver and a lock mode to maintain the at least one clamping member toward the second position to maintain a clamping force on an item in the receiver.**

Claims 11

11. A storage apparatus comprising:

a body defining at least one receiver; **a body defining at least one receiver;**
at least one clamping member cooperating with the at least one receiver
and being moveable between a first position so the at least one receiver can
receive an item for storage and a second position to apply force to secure an
item in the at least one receiver for storage; and
an actuator biasing the at least one clamping member, the actuator being
selectively operable to move the at least one clamping member toward the
second position and convert the biasing of the at least one spring to a clamping
force. **at least one clamping member cooperating with the at least one receiver**
and being moveable between a first position so the at least one receiver can
receive an item for storage and a second position to apply force to secure an item
in the at least one receiver for storage; and
an actuator having at least one spring capable of biasing the at least one
clamping member, the actuator being selectively operable to move the at least
one clamping member toward the second position and convert the biasing of the
at least one spring to a clamping force

Claims 12 and 13

12. a body; **a body defining at least one receiver;**

12. at least one clamping member wherein the body and clamping member

define a receiver for a storage item; and 13. The storage apparatus of claim 12 wherein the actuator and clamping member may be biased to a receiving position such that the receiver is capable of accepting an item therein. **at least one clamping member cooperating with the at least one receiver and being moveable between a first position so the at least one receiver can receive an item for storage and a second position to apply force to secure an item in the at least one receiver for storage; and**

12. an actuator cooperating with clamping member to bias the clamping member for retaining a storage item within the receiver. **an actuator having at least one spring capable of biasing the at least one clamping member, the actuator being selectively operable to move the at least one clamping member toward the second position and convert the biasing of the at least one spring to a clamping force**

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Prior Pertinent Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. '710 to London et al. London teaches a clamp structure able to store items.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kofi A. Schulterbrandt whose telephone number is (703) 306-0096. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kofi Schulterbrandt
June 20, 2004


RAMON O. RAMIREZ
PRIMARY EXAMINER
ART UNIT 3632